

## ORDINANCE NO. 04-34C

AN ORDINANCE AMENDING AN ORDINANCE ENTITLED, "CODE OF THE TOWNSHIP OF LONG BEACH, COUNTY OF OCEAN, STATE OF NEW JERSEY, 1997" BY THE ADDITION OF A NEW CHAPTER, CHAPTER 26 PERTAINS TO EXEMPTION OF PROFESSIONALS FROM PUBLIC BIDDING REQUIREMENTS.

THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF LONG BEACH DO ORDAIN:

SECTION I**§26-1. Preamble.**

WHEREAS, professional business entities are exempt from public bidding requirements; and

WHEREAS, there is the potential for professional business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts; and

WHEREAS, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, as well as the quality or cost of services received; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities;

NOW, THEREFORE, BE IT ORDAINED, that the policy of the Township will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Township.

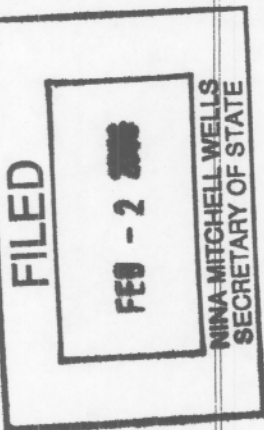
**§26-2. Prohibition on Awarding Public Contracts to Certain Contributors.**

a. Any other provision of law to the contrary notwithstanding, the Township of Long Beach or any of its purchasing agents or agencies, including all boards and commissions, or any of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions or purchase of tickets, advertisements or the like, which proceeds will be used by or on behalf of, or to a campaign committee of any candidate or holder of a public office in the Township of Long Beach at a cost or expense exceeding the sum of Two Hundred and Fifty Dollars (\$250.00) during any of two calendar years immediately preceding the date of the contract or agreement or during the term of such contract or agreement.

b. No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department, board, commission or agency thereof or of its independent authorities for the rendition of professional services shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions or purchase of tickets, advertisements or the like, which proceeds will be used by or on behalf of or to any candidate or holder of any public office of the Township of Long Beach.

c. Any professional business entity which makes contributions after the effective date of this act, shall be barred from contracting with Long Beach Township for a period two years from the date of the latest contribution which would bar a professional contract pursuant to the terms of this section.

d. For purposes of this ordinance, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or



association. The partners, and officers and all employees employed by the entity as well as any subsidiaries directly controlled by the business entity.

**§26.3. Contributions Made Prior to the Effective Date.**

No contribution of money or any other thing of value, including in-kind contributions, made by professional business entity to any municipal candidate for the Township Commission shall be deemed a violation of this ordinance, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this ordinance.

**§26.4 Contribution Statement by Professional Business Entity.**

a. Prior to awarding any contract or agreement to procure services with any professional business entity, the Township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not made a contribution in violation of §26-2 hereof and has not made or solicited contributions through intermediaries for the purpose of concealing the source of the contribution(s).

b. The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township and shall be in addition to any other certifications that may be required by any other provision of law.

**§26-5. Retroactivity of Future Clarifications Adopted.**

It is anticipated that there may be some professional business entities which determine to attempt a legalistic adherence to the letter, rather than the spirit of this ordinance. It is the declared intent of this municipal governing body to remain vigilant to recognize such attempts to subvert the underlying purposes for which this ordinance was adopted. Any professional business entity which may attempt such creative subversion does so at its peril. If and in the event creative actions are taken in order to defeat the purposes of this ordinance, it is the intention of the governing body to enact appropriate clarification of this ordinance, which clarification shall be retroactive to the initial effective date of this ordinance thereby disqualifying such creative professional business entities from serving the Township. Changes to this ordinance which are not for purposes of clarification, but which are amendments to the provisions hereto, shall become effective upon adoption and publication according to law.

**§26-5. Penalty.**

a. All Township professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity as defined in §26-2c. to violate §26-2c. or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

b. Any professional business entity as defined in §26-2c. who knowingly fails to reveal a contribution made in violation of this ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Township contracts for a period of four calendar years from the date of the violation.

c. Notwithstanding the foregoing paragraphs a. and b., any person or entity who violates any provision of this ordinance shall, upon conviction, be liable for the penalties set forth in §1-17 of the Code of the Township of Long Beach.



## SECTION II

All ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

## SECTION III

If any word, phrase, clause, section or provision of this ordinance shall be found by any court of competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

## SECTION IV

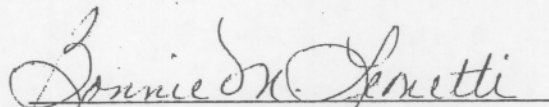
This ordinance shall take effect after the first publication thereof after final passage according to law.

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NOTICE

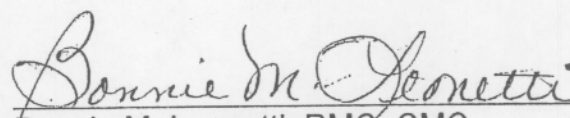
Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Board of Commissioners of the Township of Long Beach, County of Ocean, State of New Jersey, held on Friday, November 19, 2004 at 7:00 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Board of Commissioners to be held on Tuesday, December 7, 2004 at 4:00 p.m. at the Public Safety Building, 6805 Long Beach Blvd., Brant Beach, NJ 08008.

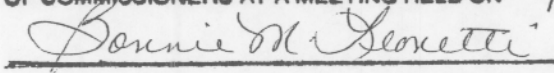
  
Bonnie M. Leonetti, RMC, CMC  
Municipal Clerk

CERTIFICATION

I, BONNIE M. LEONETTI, Municipal Clerk for the Township of Long Beach do hereby certify that the foregoing Ordinance 04-34C was duly adopted by the Board of Commissioners at their meeting held on Tuesday, December 7, 2004 at 4:00 p.m.

  
Bonnie M. Leonetti, RMC, CMC  
Municipal Clerk

I, BONNIE M. LEONETTI,  
MUNICIPAL CLERK, OF THE TOWNSHIP  
OF LONG BEACH, COUNTY OF OCEAN,  
HEREBY CERTIFY THAT THE ABOVE  
IS A TRUE COPY OF AN (ORDINANCE)  
(RESOLUTION) ADOPTED BY THE BOARD  
OF COMMISSIONERS AT A MEETING HELD ON 12/7/04



BONNIE M. LEONETTI  
MUNICIPAL CLERK

